

LAW OFFICES OF JOHN M. O'DONNELL
John M. O'Donnell (CA Bar Assn. No. 142906)
2100 Northrop Avenue, Suite 800
Sacramento, CA 95825
Telephone: (916) 563-7744

Attorneys for EDYTHE KELLOGG

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

W.R. GRACE & CO.,)	CASE NO. 01-01139
)	
Debtor.)	DATE:
)	TIME:
)	DEPT:
)	

DECLARATION OF GLENN S. GUENARD IN SUPPORT
OF MOTION TO ANNUL THE AUTOMATIC STAY

I, GLENN S. GUENARD, declare as follows:

1 I am an attorney duly licensed to practice law in the state
of California. I am a partner in the law firm of Laskin & Guenard,
counsel of record for Creditor EDYTHE KELLOGG (hereinafter
KELLOGG), the moving party in this motion.

2. Ms. KELLOGG's claim against the Debtor arises from an
automobile accident which occurred on December 21, 2000, in
Sacramento, California. One of the Debtor's employees, Wayne Lamar
Nussbaum, injured the Plaintiff in a motor vehicle accident during
the course and scope of his employment for the Debtor. The motor
vehicle being operated by Mr. Nussbaum failed to yield the right of
way to the motor vehicle being operated by Ms. KELLOGG. As a result,
Mr. Nussbaum's vehicle hit Ms. KELLOGG's vehicle broadside. As set

1 forth in more detail below, Ms. KELLOGG was severely injured in the
2 accident. She was and is in need of extensive medical care.

3 3. There is currently pending litigation entitled EDYTHE
4 KELLOGG vs. WAYNE LAMAR NUSSBAUM and W.R. GRACE CO., Case No.
5 01AS07626 (hereinafter ~~the~~ Litigation~~)~~) now pending in the Superior
6 Court for the county of Sacramento, California. The Litigation was
7 commenced on December 13, 2001, which is subsequent to commencement
8 of the Debtor's Chapter 11 proceeding. We and Ms. KELLOGG were
9 unaware of the commencement of the Chapter 11 proceeding until so
10 advised by the Debtor's counsel. Attached to the accompanying
11 Motion To Annul The Automatic Stay as Exhibit ~~A~~ and incorporated
12 herein by this reference is a copy of the Complaint For Damages
13 (hereinafter ~~Complaint~~) filed against the Debtor and its employee
14 on December 13, 2001. Based upon the undisputed facts of the case,
15 this appears to be a case of clear liability. It is anticipated that
16 the only issue of substantial dispute will be that of the damages
17 sustained by Ms. KELLOGG. Because there is insurance coverage for
18 damages of the type sustained by Ms. KELLOGG, it would not be
19 anticipated to be necessary to proceed against assets of the estate
20 to satisfy any judgment rendered.

21 4. Ms. KELLOGG seeks to have the automatic stay annulled with
22 respect to commencement of the Litigation, the filing of which is
23 rendered void by the provisions of 11 U.S.C. Sec. 362.

24 5. Ms. KELLOGG seeks relief from the automatic stay to permit
25 her to proceed against the Debtor's insurance policy which covers
26 liabilities such as that to Ms. KELLOGG. Specifically, Ms. KELLOGG
27 seeks authorization to liquidate her claim against the Debtor in the
28 Litigation which is pending, and enforce any rights which she may

1 have against the non-estate assets provided by insurance coverage.
2 In prior conversations which I have had with attorneys for the
3 Debtor, I have been advised that there is an insurance policy in
4 effect which covers this liability owed by the Debtor. However, the
5 Debtor's attorneys have refused to provide me with information
6 regarding the name of the insurer and the policy number.

7 6. It will not interfere with the administration of this
8 estate to grant Ms. KELLOGG the limited relief requested. It is our
9 intention and need only to liquidate Ms. KELLOGG's claim in the state
10 court system, and then proceed to enforce the liability against the
11 Debtor's insurance policy covering this event. Because this is an
12 insured loss, the insurance company will provide counsel for the
13 Debtor at no cost.

14 7. Ms. KELLOGG's interests are subject to substantial jeopardy
15 as a result of the continuation of the automatic stay in this case.
16 Ms. KELLOGG is 82 years old. Ms. KELLOGG was severely injured in the
17 automobile accident and requires 24 hour per day care and assistance
18 in living. Ms. KELLOGG's injuries sustained as a result of the
19 automobile accident have effectively disabled her to the extent that
20 it is imperative that she have recourse against the Debtor's
21 insurance policy to pay the medical bills incurred as a result of the
22 accident.

23 8. The interests of Ms. KELLOGG are not adequately protected
24 in these proceedings due to the continuation of the automatic stay
25 upon filing of the bankruptcy with respect to the insurance policy
26 maintained by the Debtor for coverage of liabilities such as that
27 asserted by Ms. KELLOGG.

28 / / /

1 9. It is necessary and appropriate for this court to enter an
2 order immediately annulling the automatic stay to validate the filing
3 of the Litigation and modifying the automatic stay to allow Ms.
4 KELLOGG to exercise any and all rights she has under applicable state
5 law against the Debtor's insurance policy coverage for this event.

6 I declare the foregoing of my own personal knowledge and could
7 competently testify to the same if called to do so.

8 I declare the foregoing is true and correct under the penalty
9 of perjury under the laws of the State of California. Executed this
10 24 day of January, 2002, at Sacramento, California.

11
12 
13 _____
14 GLENN S. GUENARD
15
16
17
18
19
20
21
22
23
24
25
26
27
28